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RECENT CASE NOTES

ASSIGNMENT—DUTY OF ASSIGNOR TO ASSIGNEE.—The defendant entered into a contract with the Dominion Sugar Company of Ontario, Canada, for the purchase of 2,000 tons of sugar at 9.5 cents per pound. The sugar was to be delivered in New York. Later he contracted to sell to the plaintiff, an agent for a foreign corporation, 1,750 tons of the same sugar at 10.5 cents per pound. The Dominion Sugar Company had no knowledge of this agreement. The Canadian Goverment placed an embargo on sugar and the Dominion Company applied to the defendant for a release from its contract. This was granted upon the payment of a large consideration. The defendant refused either to deliver the sugar to the plaintiff or to indemnify him. The plaintiff sued for the difference between the contract price and the market price at the time fixed for delivery. *Held,* that, viewing the original transaction between the plaintiff and the defendant as an assignment *pro tanto,* the plaintiff could recover. *Gray & Co. v. Cavalliotis* (1921, E. D. N. Y.) 276 Fed. 565.

It would be a breach of good faith for an assignor to destroy a contract right already assigned. *In re Ellington Planting Co.* (1912) 131 La. 654, 60 So. 25. Hence an assignor who collects a debt which he has previously assigned is a constructive trustee for his assignee. *MacDonald & Graham v. Kneeland & Luddington* (1861) 5 Minn. 352. Especially is this true in the case of partial assignments. *Hinkle Iron Co. v. Cohen* (1920) 229 N. Y. 179, 128 N. E. 113; see COMMENTS (1919) 28 YALE LAW JOURNAL, 395. An unwarranted interference with the contractual relations existing between an assignee and the original obligor might be considered a tort. See *Lumley v. Gye* (1853, Q. B.) 2 El. & Bl. 216; *Temperton v. Russell* [1893, C. A.] 1 Q. B. 715. So also a quasi-contractual recovery might be had on the ground of unjust enrichment if the assignor releases for a consideration, as in the instant case. The court based its decision, however, on the ground that the defendant had broken an implied contract not to release the original obligor. Some courts have reached the same result in similar cases without indicating the specific theory upon which the recovery was allowed. *Hubbard v. Prather* (1808, Ky.) 1 Bibb. 178; *Executors of Willson v. Winn* (1804, S. C.) 2 Bay, 517. In one case the court did not refer to an implied contract, but apparently allowed a recovery on that ground. *Alston v. Gillespie* (1887) 78 Ga. 665, 3 S. E. 562. The more fully considered decisions, however, definitely recognize that any act of the assignor destructive of the assignee's rights is a breach of an implied contract. *Ward v. Audland* (1847, Exch.) 16 M. & W. 862; *Aulton v. Atkins* (1856, C. P.) 18 C. B. 249; *Gerard v. Lewis* (1867) L. R. 2 C. P. 305; see also *Sanders v. Aldrich* (1857, N. Y.) 25 Barb. 63. Implied contracts are "obligations arising from mutual agreement and intent to promise but where the agreement and promise have not been expressed in words." 1 Williston, *Contracts* (1920) sec. 3. To hold that an assignor must not interfere with the rights of his assignee seems to be a legitimate application of this definition. The cause of action being for breach of contract, the damages would be measured by the injury suffered by the assignee. A similar result would be reached if the plaintiff sued in tort, but in quasi-contract he would recover the amount of the consideration of the release. In so far as the decision in the principal case relates to the point here discussed, it appears to be the first direct American authority.

CONFLICT OF LAWS—BILLS AND NOTES—APPLICABILITY OF FOREIGN REVENUE LAWS.—Suit was brought in New York on an unstamped negotiable promissory note executed in London and made payable in New York. The defendant denied